

Alan F. Ciamporcero  
Executive Director

Federal Regulatory Relations  
1725 Pennsylvania Avenue, N.W., 10th Floor  
Washington, D.C. 20004  
(202) 383-6415

PACIFIC  TELESIS  
Group-Washington

DO NOT FILE IN CHARGE

July 12, 1994

RM-8491

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

William F. Caton  
Acting Secretary  
Federal Communications Commission  
Mail Stop 1170  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Dear Mr. Caton:

Re: *Petition For Rulemaking To Adapt The Section 214 Process To The Construction of Video Dialtone Facilities; Petition For Relief From Unjust And Unreasonable Discrimination In The Deployment Of Video Dialtone Facilities*

On behalf of Pacific Bell, please find enclosed an original and six copies of its "Opposition To Petition For Relief And Petition For Rulemaking" in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,



Enclosures

DOCKET FILE COPY ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of

Petition For Rulemaking To Adapt The  
Section 214 Process To The Construction  
Of Video Dialtone Facilities

Petition For Relief From Unjust And  
Unreasonable Discrimination In The  
Deployment Of Video Dialtone Facilities

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**PACIFIC BELL'S OPPOSITION TO PETITION FOR RELIEF  
AND PETITION FOR RULEMAKING**

JAMES P. TUTHILL  
LUCILLE M. MATES

140 New Montgomery St., Rm. 1526  
San Francisco, California 94105  
(415) 542-7654

CHRISTOPHER L. RASMUSSEN  
2600 Camino Ramon, Rm. 2W901  
San Ramon, California 94583  
(510) 823-8387

JAMES L. WURTZ

1275 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
(202) 383-6472

Attorneys for Pacific Bell

Date: July 12, 1994

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## Summary

Petitioners' allegation of electronic redlining by Pacific Bell is wrong. Our long-standing endorsement of universal service continues as we enter the Information Age. We have publicly committed to provide statewide access to advanced capabilities such as databases and the Internet by 1997 and to broadband capabilities by 2010. We will not exclude any income, racial or ethnic group. "Skipping over" communities is not consistent with our track record, nor good business among the richly diverse communities in California. However, in order to keep our commitment to provide advanced capabilities without increasing basic residential rates to fund those network upgrades, deployment must be strategically scheduled. Our initial four video dialtone deployment areas best met our considerations of universal access, the competitive environment, the existing infrastructure, the demand for services and engineering efficiencies. The result is that the initial four areas will serve a representative mix of Californians as measured by income, race and ethnicity.

While we share Petitioners' commitment to the reasonable, nondiscriminatory, fair deployment of video dialtone facilities, we urge the Commission to reject both the Petition for Relief and Petition for Rulemaking as unwarranted and

unnecessary. The Communications Act and Commission regulations prohibit unreasonable discrimination and also provide the authority and the means for the Commission to remedy unreasonable discrimination. The requested provisions would increase regulation without tangible benefit. Such redundancy is wasteful, contrary to the Administration's initiative to reinvent government and ultimately can have the effect of delaying the very access that Petitioners seek.

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of

Petition For Rulemaking To Adapt The  
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Petition For Relief From Unjust And  
Unreasonable Discrimination In The  
Deployment Of Video Dialtone Facilities

**PACIFIC BELL'S OPPOSITION TO PETITION FOR RELIEF  
AND PETITION FOR RULEMAKING**

Pacific Bell, pursuant to Section 1.405(a) of the Commission's rules, submits its opposition to the Petition for Relief ("Relief Petition") and the Petition for Rulemaking ("Rulemaking Petition") filed by the Center for Media Education, the Consumer Federation of America, the Office of Communication of the United Church of Christ, the National Association for the Advancement of Colored People, and the National Council of La Raza ("Petitioners") in the above-captioned proceeding.

Pacific Bell shares Petitioners' dedication to nondiscriminatory, fair deployment of technology. For that reason we have committed to deploying our advanced broadband

network throughout California. We have publicly stated our intent from the beginning to serve all Californians within our service area. We have not and do not intend to bypass low income or ethnic minority communities. If we are permitted to deploy the statewide advanced network as we intend, video dialtone will be made available in an equitable, nondiscriminatory but economically sound manner. While we support the Petitioners' goals of nondiscriminatory, fair deployment, however, we do not believe that the relief requested is warranted or that a rulemaking is necessary.

I. RELIEF IS NOT WARRANTED BY THE EVIDENCE WHICH SHOWS PACIFIC BELL'S EQUITABLE DEPLOYMENT PLANS.

The Petition for Relief incorrectly alleges that Pacific Bell is discriminating in the proposed construction of video dialtone facilities on the basis of income, race or ethnic status. Petitioners request the Commission to (1) announce its commitment to universal video dialtone service and to nondiscriminatory deployment at each phase of construction; (2) issue an interpretive rule that existing rules require universal service and nondiscrimination on the basis of income, race, or

ethnicity; and (3) instruct the staff to identify and remand applications which appear to violate those objectives.<sup>1</sup>

(A) Pacific Bell's Initial Deployment Will Serve A Representative Mix Of Californians

Pacific Bell denies that it has or is engaged in electronic redlining.<sup>2</sup> To the contrary, Pacific Bell is committed to bringing the advanced broadband telecommunications network to all Californians in our service area. Our statewide broadband deployment is consistent with our public commitment to universal service. We intend to make statewide access available to advanced services such as data bases and the Internet by 1997 and to broadband capability by 2010. Our upgraded broadband facilities will serve 1.5 million homes by the end of 1996, 5 million homes by the year 2000, and to all homes in our service area statewide by 2010.

Four areas are targeted for initial deployment. During the next two years, with Commission approval, that initial deployment will provide video dialtone capability to a

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<sup>1</sup> Relief Petition, pp. 14-17.

<sup>2</sup> Pacific Bell previously responded to the Petition for Relief by Letter to William F. Caton, Acting Secretary, FCC, dated June 2, 1994, attached and made a part of this Opposition by incorporation.



representative group of Californians as measured by income and ethnicity. That is clearly demonstrated by the income and ethnicity levels for the initial deployment areas compared with levels for the state of California:

#### **HOUSEHOLD INCOME**

<b>Income</b>	<b>State of California</b>	<b>1994-96 Initial Deployment Areas</b>
\$100K+	10.5%	14.9%
\$50K - 100K	29.4%	35.4%
\$25K - 50K	30.9%	28.3%
Under \$25K	29.2%	21.5%

Source: Equifax National Decision Systems 1994 Data.

## POPULATION BY ETHNICITY

Ethnicity	State of California	1994-96 Initial Deployment Areas
White	66.7%	67.9%
Black	7.8%	7.4%
Asian	10.8%	14.2%
Other	14.7%	10.5%
Total	100%	100%
Of Spanish origin*	27.3%	23.2%

Source: Equifax National Decision Systems 1994 Data.<sup>3</sup>

As this evidence shows, Petitioners' basic conclusion as to electronic redlining is not accurate. Pacific Bell's current deployment does not deny services to specific income or ethnic groups. We do not now "skip over" areas and we do not intend to do so. But it will take time to upgrade our network to provide facilities throughout the state. We have also pledged to maintain basic residential rates without increases for the network upgrades. Our deployment plans must permit us to honor

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<sup>3</sup> During the 1990 Census, people were first asked if they were White, Black, Asian or Other. There was no choice for Hispanic or Spanish origin. On a separate question, people were asked if they were of Spanish origin, thus denoting an overlay percentage. For example, 27.3% of the total population of White, Black, Asian and Other consider themselves of Spanish origin.

that commitment and introduce commercially viable services. The planning process we use reflects our commitment to bring advanced capabilities to all Californians, as well as considerations of the existing infrastructure, the competitive environment, the demand for services and engineering efficiencies. We planned our initial upgrades for areas that best met these criteria. We will move next to contiguous areas, expanding video dialtone capability to all communities in the process.

Pacific Bell's commitment to the universal service goals of the Communications Act extends to providing access to the Communications Superhighway. For example, Pacific Bell has been at the forefront of the technological initiative for California's public schools and libraries. On February 14 of this year, we publicly announced that we will wire and provide the capability for video and data applications to every California public school and library in our service territory without charge. We recently applied for schools in this "Education First Program".<sup>4</sup> Usage charges will also be waived for one year after installation. We are also working with the California Public Utilities Commission to develop special educational access rate to ensure affordable telecommunications

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<sup>4</sup> Pacific Bell Advice Letter No. 17021, filed June 30, 1994, revising SCHEDULES CAL. P.U.C. Nos. A2, A3, A5, A6 and A9.

connectivity for educational instruction. Given our track record on universal service, there is just no validity to any allegation of electronic redlining.<sup>5</sup>

II. THE COMMISSION SHOULD CAREFULLY EXAMINE THE BASIS FOR PETITIONERS' CONCLUSIONS.

(A) The Methodology Of The Study Is Fundamentally Flawed

The erroneous conclusion reached by Petitioner as to Pacific Bell's initial deployment areas is based on a study by Dr. Mark N. Cooper. Dr. Cooper's analysis, which uses only rudimentary information, is fundamentally flawed by the omission of California's Asian residents. This significant group of Californians comprises more than 10% of the state's population. Dr. Cooper's analysis also fails to consider our plans for the Los Angeles area which includes the city of Los Angeles, California's most populous city.

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<sup>5</sup> We serve more Lifeline customers than all 1400 local phone companies in America. Our Ethnic Markets Group is a pioneer and expert in providing information and services in customers' preferred languages. We actively support AB 3643, California's proposed Universal Service Act of 1994.

(B) Before The Conclusion Is Accepted, More  
Information On The Methodology Used Is Needed

In addition to the omission of critical demographic data, the Relief Petition does not sufficiently explain the study's methodology so that the validity of Dr. Cooper's conclusion can be tested. Additional information is needed. For instance, it is important to know exactly what areas were compared. Error could be introduced by the visual overlay of deployment maps onto census tracts which do not represent identical areas. Similarly, error could be introduced in the county-to-county comparison for Orange County and the South Bay area.

Dr. Cooper's analysis of Pacific Bell's initial deployment areas is based on means. Differences in the means between served and unserved areas for income and racial groups were found but Dr. Cooper does not explain how the differences were determined and whether the variability is statistically significant. The Commission should require answers before proceeding further. Petitioners' conclusion is not sufficiently supported, particularly in light of the evidence that shows that our initial deployment areas are representative of California's income and ethnic diversity.

### III. A RULEMAKING IS NOT NECESSARY.

#### (A) Existing Law Prohibits Unreasonable Discrimination And Provides The Structure To Remedy Such Conduct

The Rulemaking Petition requests the addition of an anti-redlining provision to the Commission's Section 214 application process as well as new requirements for census tract data; local public notice of video dialtone deployment plans; public hearings; and a 60-day public comment period following the hearings.<sup>6</sup> Petitioners assert that these provisions are necessary because the commercial video dialtone applications evidence a clear pattern of electronic redlining.<sup>7</sup>

As demonstrated above, the allegation of redlining by Pacific Bell is not supported by the evidence. If, however, unreasonable discriminatory conduct were to be found in the context of video dialtone or in any other common carrier service, the Communications Act and the Commission's regulations currently provide the authority and the processes for remedy. Additional regulation is not necessary.

The Communication Act mandates that the Commission make available telecommunications service "to all the people of the

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<sup>6</sup> Rulemaking Petition, pp. 3-4.

<sup>7</sup> Rulemaking Petition, p. 1.

United States".<sup>8</sup> What Petitioners allege -- the unreasonable, deliberate intent to discriminate based on economic, racial or ethnic basis -- is prohibited by §202 of the Communications Act.

It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

Thus, according to §202, the reasonable, equitable and nondiscriminatory deployment of facilities is one element of the public interest, convenience and necessity -- the standard every §214 Application must meet.

In addition, the Communication Act authorizes the Commission to require a carrier to provide adequate facilities to perform its obligation as a common carrier.<sup>9</sup> The Commission has long recognized that authority.

When a common carrier is authorized to provide service to the public, that carrier incurs a responsibility to provide the authorized services. Section 201 of the Communications Act of 1934, charges a carrier with the duty to provide its authorized communications services

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<sup>8</sup> 47 U.S.C. §151.

<sup>9</sup> 47 U.S.C. §214(d).

upon reasonable request therefor. Section 214(d) of the Act empowers us to require a carrier to provide itself with adequate facilities.<sup>10</sup>

Because the Commission's authority is more than adequate to deal with any unreasonable discrimination, the effect of a rulemaking would be to increase the amount of regulation without commensurate benefit.

Petitioner's specific recommendations for public notice and the opportunity to comment are redundant of existing rules.<sup>11</sup> Pacific Bell's applications for video dialtone facilities received wide public press as have other companies' applications, providing ample notice of proposed plans. Anyone could comment on the applications. Indeed, that opportunity continues today. The Commission's ex parte rules permit communications that become a part of the official record.<sup>12</sup> The Commission's current complaint procedures provide means of redress. Any party that is aggrieved may file either an informal or formal complaint.<sup>13</sup> The proposed rules will not provide additional rights. Thus, the

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<sup>10</sup> FTC Communications Inc., 15 FCC 2d 15, 18 (1979); Inquiry into Problems of Public Coast Radio Telegraph Stations, 67 FCC 2d 790 (1978); Policy and Rules Concerning Rates for Dominant Carriers, 3 FCC Rcd. 3195, 3458 (1988).

<sup>11</sup> 47 C.F.R. §6352(b), (c).

<sup>12</sup> 47 C.F.R. §1.1206.

<sup>13</sup> 47 C.F.R. §1.711 et seq.



proposed additional procedures will not increase anti-discrimination protection but can have the effect of lengthening the already cumbersome §214 review process. Instead of the positive effect anticipated by Petitioners, the net effect can be to delay the very access Petitioners advocate -- the common carriage of video programming and services and competition with incumbent cable operators.

Petitioners' recommendation that application requirements for broadcasters apply for video dialtone applications should be rejected. Broadcast application requirements are consistent with policy concerns that result from a broadcaster's exclusive use of a finite resource. Video dialtone facilities will never be used exclusively by the carrier or by one programmer. Indeed, unlike broadcast services, common carriage is the hallmark of video dialtone. All video programmers can have access. Thus, the rules which meet the specific policy concerns of broadcasting have no application to video dialtone.

(B) Redundant Regulation Is Contrary To The  
Administration's Initiative To Reduce Government  
Regulation

The Commission's current rules would be duplicated if Petitioners' recommendations are adopted. Adding unnecessary

regulations directly conflicts with the intention of the Administration to "reinvent government".

The equitable deployment of technology and services that can influence individual and societal welfare is not to be taken lightly. Pacific Bell is firmly committed to avoid a society divided by access to resources. However, when current law and rules protect against that concerns, additional regulation is wasteful. Vice President Al Gore's report on reinventing government concluded that the cost of complying with regulation by the private sector is at least \$430 billion annually or 9% of our Gross Domestic Product.<sup>14</sup> Mr. Gore advocated federal agencies review its regulations over the next three years with a goal of eliminating 50% of those regulations. The recommendations by Petitioner will add redundancy to existing regulations and expands, not reduces, government regulation. As such, the recommendations should be rejected.

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<sup>14</sup> "'Reinvention' Plan Favors Electronic Government", Telecommunications Reports, (BPR Publications, Wash. DC, 9/13/93, at 25-26).

IV. CONCLUSION

For the reasons above, Pacific Bell urges the Commission to deny the Petition for Relief and Petition for Rulemaking.

Respectfully submitted,

PACIFIC BELL

*Lucille M. Mates*

JAMES P. TUTHILL

LUCILLE M. MATES

140 New Montgomery St., Rm. 1526  
San Francisco, California 94105  
(415) 542-7654

CHRISTOPHER L. RASMUSSEN

2600 Camino Ramon, Rm. 2W901  
San Ramon, California 94583  
(510) 823-8387

JAMES L. WURTZ

1275 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
(202) 383-6472

Its Attorneys

Date: July 12, 1994

Alan F. Ciamporecero  
Senior Counsel

1275 Pennsylvania Avenue, N.W.  
Suite 400  
Washington, DC 20004  
(202) 383-6416

PACIFIC  TELESIS  
Group

June 2, 1994

William F. Caton  
Acting Secretary  
Federal Communications Commission  
Mail Stop 1170  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Re: Petition for Relief of Center for Media Education,  
Consumer Federation of America, Office of Communication  
of the United Church of Christ, National Association for  
the Advancement of Colored People, National Council of  
La Raza.

Dear Mr. Caton:

This letter responds to and opposes Petitioners May 23, 1994 informal request for relief. Petitioners' conclusion is patently wrong. Pacific Bell has not engaged in electronic redlining. To the contrary, Pacific Bell is committed to providing advanced telecommunications facilities and services, including video dialtone, to all California customers. We intend to upgrade our facilities statewide to serve 1.5 million homes by the end of 1996, 5 million homes by the year 2000 and, by 2010, the advanced telecommunications network will reach all of our customers. But we cannot build everywhere at once.

If Petitioners had asked, we would have shared our plans and studies demonstrating that our initial deployment will serve a representative mix of Californians. Our deployment plans for the next two years will bring video dialtone services to Californians who generally approximate the income and racial diversity of the state as a whole. Our initial construction will begin in four areas but we plan to expand quickly into contiguous areas. We do not plan to "skip over" areas. Unlike other proposals, we will be upgrading our entire statewide network to provide advanced telecommunications services, including improved telephony services. Video dialtone will be only one of the services available. Our planning and the related deployment are driven by the commitment to provide these advanced services to all California customers. The initial deployment clusters and geographic areas described in our Section 214 Applications reflect that commitment.

On the other hand, we have also pledged not to raise basic residential rates to fund construction. Our deployment plans must permit us to honor that commitment and introduce commercially viable services. We expressly considered five criteria in our deployment strategy: provision of service to all Californians; the competitive environment; existing infrastructure; demand for services; and engineering efficiencies. These criteria will continue to guide us and will permit us to provide advanced services to all California customers by 2010.

Petitioners' conclusions rely on a study by Dr. Mark N. Cooper. Dr. Cooper claims his analysis shows a clear pattern of redlining. Based on rudimentary information, Dr. Cooper concludes that areas that are predominately lower income and minority have not been provided for in video dialtone proposals, with the consequence that there will be a failure to serve the lowest income areas. First, Dr. Cooper's study of the Pacific Bell Applications is fundamentally flawed by his failure to include California's Asian residents. Asians make up a significant group of Californians.

In addition, it is impossible to evaluate the validity of his conclusions because Dr. Cooper fails to provide sufficient explanation of his methodology. For example, what was the effect of using different comparison areas -- the San Diego served area is compared with the rest of that CMSA but Orange County and the South Bay served areas are compared with entire counties? What areas were included (or excluded) from the category of "unserved" areas for this analysis? What levels of differences between served and unserved areas would be significant? Even more significantly, Dr. Cooper entirely omits any analysis of our plans for Los Angeles, California's most populous city.

Pacific Bell endorses the Commission's concept of universal service for video dialtone. We too wish to avoid an "information rich -- information poor" society. For that reason, independent of our video dialtone applications, this Spring we said that we will provide all public schools, libraries and community colleges with connections for computer communications and videoconferencing by the end of 1996. With approval from the California Public Utilities Commission, we will wire locations within each institution for video and data applications, install service for free and waive the usage charges for one year after installation. We will also work with the CPUC to develop a special educational access rate that will help ensure universal telecommunications service for educational institutions.

Pacific Bell supports the Commission's video dialtone goals, including the availability of video dialtone facilities to all, regardless of income, race or ethnicity. We believe our deployment plans reflect our commitment to provide advanced

telecommunications facilities for the benefit of all Californians. Petitioners have not supported their conclusions as to Pacific Bell or justified the requested relief. The Commission should decline to act on the Petition. If, however, the Commission decides otherwise, the analysis of Pacific Bell's plans should be statewide, given the statewide nature of our network upgrade. Reviewing Pacific Bell's statewide deployment plans at the wire center or local area level would be unreasonable.

*Dean F. Crainz*

cc: Service List

CERTIFICATE OF SERVICE

I, Chuck Nordstrom, hereby certify that copies of the foregoing "PACIFIC BELL'S OPPOSITION TO PETITION FOR RELIEF AND PETITION FOR RULEMAKING" Regarding its Section 214 VDT Applications were served by hand or by first-class United States mail, postage prepaid, upon the parties appearing on the attached service list this 12th day of July, 1994.

BY: Chuck Nordstrom  
Chuck Nordstrom

PACIFIC BELL  
140 New Montgomery Street  
San Francisco, CA 94105

SERVICE LIST

Reed E. Hundt\*  
Chairman  
Federal Communications  
Commission  
1919 M Street, N. W.  
Room 814  
Washington, D. C. 20554

Andrew C. Barrett\*  
Commissioner  
Federal Communications  
Commission  
1919 M Street, N. W.  
Room 826  
Washington, D. C. 20554

James H. Quello\*  
Commissioner  
Federal Communications  
Commission  
1919 M Street, N. W.  
Room 802  
Washington, D. C. 20554

Gerald P. Vaughan\*  
Deputy Chief  
Federal Communications  
Commission  
1919 M Street, N. W.  
Room 500  
Washington, D. C. 20554

Gregory J. Vogt, Chief\*  
Tariff Division  
Federal Communications  
Commission  
1919 M Street, N. W.  
Room 518  
Washington, D. C. 20554

Donna Lampert\*  
Common Carrier Bureau  
Federal Communications  
Commission  
1919 M Street, N. W.  
Room 545  
Washington, D. C. 20554

Greg Lipscomb\*  
Common Carrier Bureau  
Federal Communications  
Commission  
2025 M Street, N. W.  
Room 6008  
Washington, D. C. 20554

Olga Madruga-Forti\*  
Acting Chief  
Federal Communications  
Commission  
2025 M Street, N. W.  
Room 6008  
Washington, D. C. 20554

James D. Schlichting\*  
Common Carrier Bureau  
Federal Communications  
Commission  
1919 M Street, N. W.

Todd F. Silbergeld\*  
Common Carrier Bureau  
Federal Communications  
Commission  
1919 M Street, N. W.



Gary Phillips\*  
Common Carrier Bureau  
Federal Communications  
Commission  
1919 M Street, N. W.  
Room 544  
Washington, D. C. 20554

David Krech\*  
Common Carrier Bureau  
Federal Communications  
Commission  
1919 M Street, N. W.  
Room 500  
Washington, D. C. 20554

James R. Keegan, Chief\*  
Domestic Facilities Division  
Federal Communications  
Commission  
2025 M Street, N. W.  
Room 6010  
Washington, D. C. 20554

INTERNATIONAL TRANSCRIPTION\*  
SERVICE, INC. (ITS)  
1919 M Street, N. W.  
Room 246  
Washington, D. C. 20554

The Honorable Togo D. West, Jr.  
Secretary of the Army  
The Pentagon  
Washington, D. C. 20310

The Honorable Jon H. Dalton  
Secretary of the Navy  
The Pentagon  
Washington, D. C. 20350

Governor Pete Wilson  
Office of the Governor  
State Capitol  
Sacramento, CA 95814

James S. Blaszk  
Patrick J. Whittle  
Gardner, Carton & Douglas  
Attorneys for AD HOC  
TELECOMMUNICATIONS USERS  
COMMITTEE  
1301 K Street, N. W.  
Suite 900, East Tower  
Washington, D. C. 20005

Stuart F. Feldstein  
Matthew D. Emmer  
FLEISCHMAN AND WALSH  
Attorneys for CENTURY  
COMMUNICATIONS CORPORATION  
1400 16th Street, N. W.  
Washington, D. C. 20036

James K. Hahn, City Attorney  
Pedro B. Echeverria,  
Senior Assistant City Attorney  
Edward J. Perez  
Assistant City Attorney  
CITY OF LOS ANGELES, CALIFORNIA  
Room 1800, City Hall East  
200 North Main Street  
Los Angeles, California 90012